

→ Anne H  
**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

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October 6, 2008

BRRTS# 07-71-550924 / 06-71-551109

William Scott  
Gonzalez Saggio and Harlan  
225 E. Michigan, Fourth Floor  
Milwaukee, WI 53202

Robert Buckingham  
Community Development Authority  
City of Neenah  
211 Walnut St.  
Neenah, WI 54956

Subject: General Liability Clarification Letter for P H Glatfelter Mill Redevelopment Site,  
201, 207, and 225 West Wisconsin Avenue, Neenah, Wisconsin

Dear Mr. Buckingham and Mr. Scott:

**Purpose**

The purpose of this letter is to provide you with clarifications regarding the environmental liability that the current and future owners may have for the former P H Glatfelter facility property located at 201, 207 and 225 West Wisconsin Avenue in Neenah, Wisconsin ("the Property"). The Department of Natural Resources ("the Department") has agreed to provide you with a letter clarifying the environmental liability associated with contaminants detected at the Property and respond to your specific concerns. It is our understanding that the Community Development Authority ("CDA") for the City of Neenah is undertaking a large redevelopment of this area of the City, and this Property is one of several that lay within the boundaries of the CDA's redevelopment area. Thus, there may be other properties adjacent to this Property that are not the subject of this general liability clarification letter.

**Request**

On September 8, 2008, William Scott requested that the Department address the environmental liability that the current and future owners of the Property may have related to the Voluntary Party Liability Exemption process, in s. 292.15, Stats., for any existing contamination at the Property. You also asked that the Department answer the following questions:

- The extent of liability of (a) the VPLE Applicant, and (b) a successor in title to the VPLE Applicant, with respect to environmental pollution at or emanating from a property for which a VPLE COC has been granted, when the VPLE Applicant receives a COC prior to passing title to the successor in title.

- The extent of liability of (a) the VPLE Applicant, and (b) a successor in title to the VPLE Applicant, with respect to environmental pollution at or emanating from a property enrolled in the VPLE Program when a VPLE applicant transfers title prior to receiving a COC. (If necessary, assume a COC is ultimately awarded with respect to the property.)

Since this site is enrolled in the VPLE program, the Department will charge an hourly, rather than flat, fee for providing assistance in the form of this general liability clarification, as required by s. NR 750.07, Wis. Adm. Code.

### **Summary of Environmental Conditions**

The Community Development Authority ("CDA") for the City of Neenah currently owns the property at 201, 207 and 225 W. Wisconsin Ave which is the former P H Glatfelter mill and referenced in this letter as "the Property". This Property is in the VPLE Program, with the CDA as the owner and applicant. The VPLE site is designated in the Department's database as "P H Glatfelter Co Redevelopment", WDNR BRRTS #06-71-551109.

At this time, there are two documented discharges of hazardous substances that are open cases at this Property:

- (1) "P H Glatfelter (former) – Chlorinated", WDNR BRRTS #02-71-550733, which is soil and groundwater impacted with chlorinated volatile organic compounds ("CVOCs") from a former dry cleaner; and
- (2) "P H Glatfelter (former) – Repair Shop", WDNR BRRTS #02-71-550734, which is soil impacted with metals and VOCs from a former repair shop.

Also at this Property is a historic ash fill ("waste") area. At this time, there are no documented discharges to soil or groundwater from the ash fill at this Property. A *Development of Historic Fill Site Exemption*, issued pursuant to s. NR 500.08(4), Wis. Adm. Code, was issued on July 1, 2008 for demolition of the above-grade structures at this Property, and referenced by the Department as "P H Glatfelter Mill Redevelopment", WDNR BRRTS #07-71-550924.

Investigation of the two documented discharges and the ash fill is not yet complete, and is being performed in conjunction with redevelopment.

The redevelopment area encompasses a larger area than the Property described above. Specifically, the larger redevelopment area encompasses Arrowhead Park Landfill, owned by the City of Neenah, and Canadian National Railroad Parcels A and B. This larger redevelopment area is known by CDA as the "Glatfelter Mill Redevelopment Project"

For clarification, there are three documented discharges to the environment within this larger redevelopment area, that are separate, open cases, are not part of the Property nor in the VPLE program, and not addressed by the clarifications made in this letter. These separate cases are:

- 1) "Arrowhead Park – Glatfelter LF", WDNR BRRTS #02-71-270852, which is contamination from the landfill on land owned by City of Neenah;
- 2) "P H Glatfelter (former) – AST", WDNR BRRTS #02-71-550537, which is soil contamination from a former fuel oil above-ground storage tank on land owned by City of Neenah; and
- 3) "P H Glatfelter (former) – Ash Fill", WDNR BRRTS #02-71-550735, which is metals, polynuclear aromatic hydrocarbons ("PAHs") and/or polycyclic biphenyls ("PCBs") in soil and/or groundwater within Canadian National RR – Parcel B. A *Development of Historic Fill Site Exemption* was issued on August 28, 2008 for demolition of the structures within

the boundaries of parcel B (train dock, building 15/caustic building and west walls of buildings 7 and 25) and construction of a steam line. This exemption is referenced by the Department as "Canadian National RR – Parcel B", WDNR BRRTS #07-71-552208.

### **Liability Clarification**

This letter will clarify the Department's present understanding of the environmental liability associated with the Property in light of the protections that would be afforded by s. 292.15, Stats., once the Certificate of Completion for the Property is issued. It is important to keep in mind that the Certificate of Completion, ("COC") will not be issued until the environmental investigations and remedial actions are completed and approved by the Department. The COC provides protection to the Voluntary Party(ies) from liability for hazardous substance discharges that occurred prior to the Department's approval of the site investigation.

**1. What is the extent of liability of (a) the VPLE Applicant, and (b) a successor in title to the VPLE Applicant, with respect to environmental pollution at or emanating from a property for which a VPLE COC has been granted, when the VPLE Applicant receives a COC prior to passing title to the successor in title?**

Prior to issuance of a COC, a Voluntary Party must successfully complete the investigation and cleanup of the Property, including any hazardous substances that have migrated off the Property, and the work must be approved by the Department. The COC exempts the Voluntary Party from future liability under most provisions of the Hazardous Substance Discharge Law, as well as certain hazardous and solid waste laws (the list of specific laws for which the Voluntary Party would be exempt are listed under the applicable provision of s. 292.15, Wis. Stats.). The voluntary party liability exemption, which is documented in the COC, assures that no additional environmental work will be required of the Voluntary Party, with respect to hazardous substance discharges that occurred prior to the approval of the site investigation, as specified in s. 292.15, including, but not limited to:

- (1) environmental standards change;
- (2) cleanup action fails despite full compliance with Department rules; or
- (3) the hazardous substance contamination that was the subject of the cleanup is discovered to be more extensive than originally anticipated.

These liability protections would only apply to the Property as defined in the VPLE application. Once the COC is issued, the Department would not be able to require that the Voluntary Party take any additional action to respond to any discharge of a hazardous substance that occurred before the site investigation was approved. The VPLE is conditioned on the Property owner being required to comply with certain requirements, such as to maintain or monitor the Property according to any land use controls that are required by the Department, as part of closure granted pursuant to ch. NR 726, Wis. Adm. Code case closure letters, and to allow access to the property if the remedy includes natural attenuation .

Also, if any discharges of hazardous substances occur on the Property after the site investigation is approved by the Department, those discharges would not be covered by the exemption. Any person who causes, controls or possesses future discharges would be responsible for taking appropriate actions under the Hazardous Substance Discharge Law and any other applicable law.

If the CDA sells the land to one or more parties after the COC is issued, under s. 292.15(3), Wis. Stats, the liability exemptions would apply to the CDA and the future owner as they would be a "successor" to the Property, and therefore all exemptions described above would apply to the CDA and the new Property owner. As described above, the future owner would not be

exempt for any discharges which occurred after the site investigation was approved. Further, the new property owner is required to comply with all applicable provisions to maintain the exemption, such as to maintain and monitor the Property as required by any conditions included in the NR 726 closure letters, and COC, allow access, obtain environmental insurance, and so on. However, if the CDA sold the Property, and a future owner failed to comply with all applicable provisions necessary to maintain the COC, the CDA would still maintain the protections afforded by the voluntary party liability exemption (see. s 292.15(2)(b)4 and 5, Wis. Stats.).

**2. What is the extent of liability of (a) the VPLE Applicant, and (b) a successor in title to the VPLE Applicant, with respect to environmental pollution at or emanating from a property enrolled in the VPLE Program when a VPLE applicant transfers title prior to receiving a COC. (If necessary, assume a COC is ultimately awarded with respect to the property.**

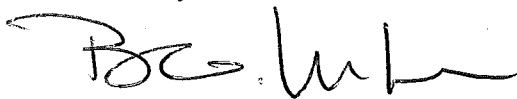
We have had a number of VPLE properties where the person (i.e., Voluntary Party) conducting the environmental response activities in the VPLE process is no longer the owner of the property. If the VP, (the CDA is presently the VP at the Property), completes the cleanup, obtains case closure for those activities and obtains the COC, the CDA would qualify for the VPLE liability protection regardless of whether they own the Property. If the CDA sells the Property before the COC is issued, but completes all remedial actions and obtains the COC, then the CDA and the current Property owner would also qualify for the VPLE liability exemption. The present Property owner would be the "successor" of the CDA's. As stated, the current property owner would need to comply with all applicable provisions to maintain the exemption.

Also, more than one person may be listed as a voluntary party under s. 292.15, Stats. In such cases, all voluntary parties would be issued a COC, and would qualify for the liability protections. However, such actions would not be necessary for a future Property owner to qualify for the exemption.

The Department hopes that this letter helps clarify what known areas of residual contamination on the Property may require further environmental response action under Wisconsin law, and who is responsible for conducting these actions. If you have any questions please contact Jennifer Borski at (920) 424-7887 or by email at [Jennifer.borski@wisconsin.gov](mailto:Jennifer.borski@wisconsin.gov)

The Bureau for Remediation and Redevelopment Tracking System ("BRRTS") identification numbers for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. See "BRRTS on the web" under "Contaminated Land Databases".

Sincerely,



Bruce Urban  
Team Supervisor, NER Region  
Remediation and Redevelopment Program

cc: Judy Ohm, LS/8  
Jennifer Borski, NER – Oshkosh  
Michael Prager, RR/5